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IN THE

Supreme Court of the United States

FESTO CORPORATION,
Petitioner,

v.

SHOKETSU KINZOKU KOGYO KABUSHIKI CO, LTD.,
A/K/A SMC CORPORATION AND SMC PNEUMATICS, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF *AMICUS CURIAE* AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION IN SUPPORT OF PETITIONERS

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BRIEF OF *AMICUS CURIAE* AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION IN SUPPORT OF PETITIONER

STATEMENT OF INTEREST[1]

The American Intellectual Property Law Association ("AIPLA") is a national association of more than 12,000 members, primarily attorneys engaged in representing

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that this brief was not authored, in whole or in part, by counsel to a party, and that no monetary contribution to the preparation or submission of this brief was made by any person or entity other than the *amicus curiae* or its counsel.

intellectual property owners. The interests and practices of AIPLA members lie in the areas of patent, copyright, trademark, trade secret and other intellectual property law. Members of AIPLA are employed by private law firms, corporations, universities, research institutions, and government, and are engaged in the creation, licensing and transfer, and enforcement of intellectual property rights. Unlike many other areas of legal practice in which separate and distinct plaintiffs' and defendants' bars exist, most intellectual property attorneys represent both intellectual property owners and alleged infringers.

The AIPLA has no stake in either of the parties to this appeal or in the outcome of the appeal, other than its interest in seeking correct and consistent interpretation of the law affecting intellectual property.

CONSENT TO FILING OF *AMICUS CURIAE* BRIEF

In accordance with Supreme Court Rule 37.2(a), the AIPLA has obtained written consent to the filing of this *amicus curiae* brief from the counsel of record for both parties. The letters of consent have been filed with the Clerk of the Court.

SUMMARY OF ARGUMENT

The draconian new "complete bar" rule announced and retroactively applied by the Federal Circuit in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 234 F.3d 558 (Fed. Cir. 2000) (*en banc*) (hereafter *Festo*), results in the complete forfeiture of any scope of equivalents for

patent claim limitations that have been narrowed for any reason related to the Patent Act, 35 U.S.C. §§ 1-376 (2000). The *Festo* complete bar rule directly conflicts with this Court's most recent affirmation of the doctrine of equivalents, *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17 (1997), and with earlier Supreme Court decisions that have preserved some scope of equivalency despite the amendment of patent claims.

If left unchecked, the *Festo* complete bar rule will have drastic negative consequences on American innovators who rely on the U.S. patent system to protect their inventions. Incentives for innovation will shrink, existing patents will decline in value, and patent prosecution in the U.S. Patent and Trademark Office (USPTO) will become more lengthy, complex, and costly. Operations of the USPTO will suffer as a result.

Since announcing the new complete bar rule the Federal Circuit has applied it retroactively to patents obtained years before *Festo*, under a very different understanding of the consequences that could result from claim amendments. Retroactive application of the *Festo* complete bar works a substantial injustice on owners of the more than 1.2 million U.S. patents now in force.

The *Festo* court's newly created complete bar rule is an important issue that either has been, or should be, decided by this Court. For this reason, the AIPLA urges the Court to grant the petition for *certiorari*.

ARGUMENT

I. The "Complete Bar" Rule Announced By the Federal Circuit in *Festo* Fundamentally Conflicts With This Court's Doctrine of Equivalents Jurisprudence

This Court in *Warner-Jenkinson* flatly rejected a bright-line test proposed by the petitioner there that "any surrender of subject matter during patent prosecution, regardless of the reason for such surrender, precludes recapturing any part of that subject matter, even if it is equivalent to the matter expressly claimed." *Warner-Jenkinson*, 520 U.S. at 30, 32 (recognizing that this Court's "prior cases have consistently applied prosecution history estoppel only where claims have been amended for a limited set of reasons," and concluding that there is "no substantial cause for requiring a more rigid rule invoking an estoppel regardless of the reasons for a change.").

Yet the *Warner-Jenkinson* petitioner's rejected theory of complete estoppel is the very essence of the draconian "complete bar" rule announced and applied by the Federal Circuit in Part III of its *Festo* opinion:

> When a claim amendment creates prosecution history estoppel with respect to a claim element, there is no range of equivalents available for the amended claim element. Application of the doctrine of equivalents to the claim element is completely barred (a "complete bar").

Festo, 234 F.3d at 569.

The Federal Circuit's qualifier that the complete bar applies "when a claim amendment creates prosecution history estoppel" is in reality no qualification at all, because narrowing amendments made for *any* reason related to the U.S. Patent Act, 35 U.S.C. §§ 1-376, will trigger total estoppel with respect to the amended limitation. *See Festo*, 234 F.3d at 566. All equivalents to the amended limitation are forfeited, no matter whether the reason for amendment was to distinguish the prior art, the "typical[]" reason for amending claims, *Warner-Jenkinson*, 520 U.S. at 31, or merely to correct an innocuous indefiniteness of claim terminology to satisfy 35 U.S.C. § 112, ¶ 2 (requiring that patent claims "particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention."). The *Festo* complete bar rule flatly contravenes this Court's unambiguous direction that "[w]here the reason for the change was not related to avoiding the prior art, the change . . . does not necessarily preclude infringement by equivalents of that element." *Warner-Jenkinson*, 520 U.S. at 33.

The Federal Circuit in *Festo* thus failed to heed this Court's sound recognition that there are "a variety" of reasons, not related to overcoming prior art, for which patent claims may be amended during the course of a patent application's pendency in the U.S. Patent and Trademark Office (USPTO). *Warner-Jenkinson*, 520 U.S. at 32. By expanding the estoppel net so drastically as to ensnare claim changes made for *any* reason related to the Patent Act, the Federal Circuit ignored this Court's well-founded concern that "[t]o change so substantially the rules of the game now could very well subvert the various balances the PTO sought to strike when issuing the numerous patents which have not

yet expired and which would be affected by our decision." *Id.*

Because the record in *Warner-Jenkinson* did not reveal the reason for the respondent's addition in the USPTO of a lower pH limit to his application claims, this Court remanded the case to the Federal Circuit for determination of "whether the reason for that addition could properly avoid an estoppel." *Id.* at 34. This Court's recognition that there *might* exist a viable reason that would avoid the imposition of prosecution history estoppel, and its instruction to the Federal Circuit that it must provide the patentee an opportunity to establish it, is plainly at odds with the *Festo* complete bar rule. Under *Festo*, if a claim is amended for "any reason which relates to the statutory requirements for a patent," *Festo,* 234 F.3d at 566, the reason for the amendment is irrelevant and no scope of equivalents remains as a matter of law. *See id.* at 576 (holding that complete bar applies where claims are narrowed, "whether the amendment is explained or unexplained. . .").

Rather than abide by this Court's narrowly-tailored, rebuttable presumption of prosecution history estoppel in the limited instance of a record that does not reveal the reason for an amendment, *see Warner-Jenkinson*, 520 U.S. at 33-34, the Federal Circuit in *Festo* vaulted to an across-the-board rigid rule of complete estoppel that refuses to consider any reason for the patent owner's claim changes. *See Festo*, 234 F.3d at 576. In the guise of creating a bright-line rule that purports to minimize uncertainty, the Federal Circuit facilitated the very evil that the doctrine of equivalents was designed to prevent: "plac[ing] the inventor at the mercy of verbalism and . . . subordinating substance to form." *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 607 (1950). In so

doing, the Federal Circuit jettisoned 18 years of its own precedent that had firmly established a flexible rule of estoppel, *see id.* at 612-15 (Michel, J., concurring-in-part and dissenting-in-part) (listing over 50 cases from 1983-2000 in which Federal Circuit applied flexible rule), and violated this Court's own legacy of doctrine of equivalents decisions that have preserved some scope of equivalents despite changes made to claims during the course of USPTO prosecution. *See id.* at 601-08 (Michel, J., concurring-in-part and dissenting-in-part) (discussing in detail eight such Supreme Court cases). In the words of one federal district court recently forced to apply it, the *Festo* complete bar rule "essentially stops the doctrine of equivalents in its tracks." *Control Resources, Inc. v. Delta Elecs.*, 133 F. Supp. 2d 121, __, 2001 U.S. Dist. LEXIS 4485, *36, *42 (D. Mass. 2001) (Young, C.J.) (criticizing *Festo* complete bar rule as "jarring in its bright-line, rigid approach, as well as in its apparent departure from established precedent").

Because the *Festo* complete bar rule fundamentally conflicts with this Court's doctrine of equivalents and prosecution history estoppel jurisprudence, this Court has already decided the issue presented in the petition. Even if not, however, the issue is an important one that should be decided by this Court.

II. The *Festo* "Complete Bar" Rule Will Adversely Affect All Persons Involved In The U.S. Patent System

The AIPLA believes that *Festo*'s complete bar rule significantly reduces the value of U.S. patents, both those already in force and those to be obtained hereafter. As a result, all persons involved in the U.S. patent system –

including inventors, investors, patent owners, patent licensees, members of the patent bar, and the USPTO – will bear the brunt of the Federal Circuit's abrupt departure from the reasonable flexible estoppel rule. The following examples demonstrate the havoc wreaked on the patent system by *Festo*'s complete bar rule.

A. *Festo* Encourages Imitation, Not Creativity

Perhaps most importantly, *Festo* diminishes incentives for innovation and thereby frustrates rather than promotes the goal of "Progress of . . . useful Arts." U.S. Constitution, Art. I, § 8, cl. 8. Handing a windfall to imitators, *Festo* maps a straightforward template for free-riding: by making any insubstantial change sufficient to avoid the literal boundary of narrowed claims, patented innovation can be imitated and exploited with ease. *See Graver Tank*, 339 U.S. at 607 (recognizing that "[o]utright and forthright duplication [should be] a dull and very rare type of infringement."). The *Festo* majority's contention that minimizing the doctrine of equivalents will promote innovation by encouraging design-arounds and improvements, *see Festo*, 234 F.3d at 577-78, may have some validity with respect to follow-on enterprises, but ignores the dramatic reduction in incentives that *Festo* represents for truly pioneer innovation and basic research. *Festo* slashes incentives for "break-through" invention because the scope of protection that the patent grant should provide has in many cases been substantially narrowed by Federal Circuit fiat.

B. *Festo* Decreases the Licensing Value of Patented Technology

Patents are personal property, *see* 35 U.S.C. § 261, and are often assigned or licensed. The licensing and transfer of patented technology is critical for all sectors of the U.S. technology community, but perhaps no more so than in the realm of innovation developed in American research universities and institutions. The most recent survey of the Association of University Technology Managers (AUTM) demonstrates that academic discoveries licensed to industry in fiscal year 1999 generated $40.9 billion in economic activity and supported 270,000 jobs. *See* Lori Pressman, ed., *AUTM Licensing Survey: FY1999* (2000) <http://www.autm.net/surveys/99/survey99A.pdf>, at FY 1999 Survey Summary 1. The *Festo* complete bar rule will adversely affect these and many other existing patent licenses. For example, a licensee may be able to alter its product or process just enough to stay outside the *Festo*-limited scope of the licensed patent's claims, and thus stop paying royalties to the patent owner. Alternatively, the threat that licensees may decide to exploit the diminished value of the patents under which they are licensed may force patent owners to renegotiate the terms of existing licenses. Transaction cost levels previously found acceptable will escalate, forcing a shift of scarce R&D resources away from innovation and towards legal maneuvering. *See generally* John A. Wasleff et al., "*Festo* Opens the Door," *Nat'l L.J.* (Feb. 5, 2001), at C1 (discussing *Festo*'s potential reduction of patent license value).

C. *Festo* Will Greatly Burden The U.S. Patent and Trademark Office

Festo will likely place a significantly heightened burden on already-taxed USPTO resources. Under *pre-Festo* law, patent prosecution in the USPTO was largely a straightforward back-and-forth negotiation between the patent applicant and the USPTO examiner. *See generally* Herbert F. Schwartz, *Patent Law and Practice* 14-26 (Fed. Jud. Ctr. 2d ed. 1995) (describing examination and prosecution procedures in USPTO). In many cases, applicants would compromise by making various claim amendments to satisfy USPTO examiners.

After *Festo,* such compromises will forfeit all equivalents to amended claim limitations. Patent prosecution will escalate in contentiousness as applicants are increasingly forced to contest rejections by refusing examiner-proffered amendments, filing more continuation applications, and taking more appeals to the USPTO Board of Patent Appeals and Interferences (BPAI), a body that is already severely backlogged. *See* Office of Inspector General, U.S. Department of Commerce, *Audit Report No. BTD-10628-8-0001: Patent and Trademark Office Board of Patent Appeals and Interferences* (Sept. 1998), at *i* (finding that number of pending appeal and interference cases grew by more than 350 percent in previous five years, and concluding that "appeal and interference pendency has increased, the effectiveness of the appeal process is threatened, and infringement on patents may occur during the delay"). The USPTO expects that *Festo* will have a "generally negative" effect on its operations as the difficulty of examining patent applications escalates and the pendency of those applications increases. *See USPTO*

Briefing Book for Patent Public Advisory Committee (Feb. 28, 2001), at 39-50 (predicting more examiner rejections for indefiniteness, new matter, and non-compliance with written description requirement; more applicant appeals to BPAI and Federal Circuit; more application filings; more examiner interviews; greater resistance to examiner amendments; more filing of continuation applications and reissue applications; and more requests for reexamination).

Escalating resource constraints for the USPTO will be matched by rising costs for the agency's users. As patent prosecution grows in complexity, innovators seeking patent protection will foot the bill for additional attorney time and USPTO fees. *See* Neal M. Cohen, "The Rule O' Festo," 19 *ABA-IPL Newsletter* 12, 13 (2001) (predicting that *Festo* will have "profound effect" on patent practitioners who will attempt to avoid making amendments by filing greater numbers of patent claims and continuing applications); William M. Atkinson et al., "Was *Festo* Really Necessary?," 83 *J. Pat. and Trademark Off. Soc'y* 111, 112 (Feb. 2001) (asserting that *Festo* will have "far-reaching implications" on process by which patents are obtained). Public disclosure of new innovation may well be stymied as inventors reject the patenting process altogether and opt for trade secret protection. *See* Joseph N. Hosteny, "Does *Festo* Change Patent Prosecution?," 8 *Intellectual Property Today* 44, 45 (May 2001).

D. *Festo* Will Negatively Impact International Patenting

The *Festo* complete bar rule will adversely affect many foreign-origin patent applications that are subsequently

filed in the U.S. *See generally* World Intellectual Property Organization, *WIPO Industrial Property Statistics Publication A* <http://www.wipo.org/ipstats/en/index.html>, at Table I (reporting that of the 294,706 patent applications received by the U.S. in calendar year 1999, 138,313 were filed by non-residents). Minor, syntax-related amendments to correct claims that were originally filed in the native language of an inventor's home country are commonplace; the USPTO requires such amendments. *See* United States Patent and Trademark Office, *Manual of Patent Examining Procedure* § 706.03(d) (7th ed, Rev. 1), at ¶ *7.34.07* (requiring rejection of claims that "appear to be a literal translation into English from a foreign document" because "generally narrative and indefinite" and "failing to conform with current U.S. practice"). Changes made to claim terminology in order to correct such deficiencies would be made in response to actual or anticipated rejections for claim indefiniteness under 35 U.S.C. § 112, ¶ 2. Because this is a reason related to the Patent Act, any such narrowed limitations would not be entitled to any scope of equivalents under *Festo*'s complete bar rule.

Similarly, the *Festo* complete bar rule may negatively implicate the international interests of U.S. patent owners. By severely diminishing the availability of the doctrine of equivalents, the *Festo* rule distances, rather than harmonizes, U.S. patent policy with that of the industrialized world. For example, the European Patent Convention is currently being revised to explicitly recognize that patent scope includes equivalents to subject matter literally claimed. *See Act Revising the Convention on the Grant of European Patents* Art. 2(1) (Munich, 29 Nov. 2000) (amending Protocol on the Interpretation of Article 69 EPC to require that "[f]or the

purpose of determining the extent of protection conferred by a European patent, due account shall be taken of any element which is equivalent to an element specified in the claims."). This disparity of protection does not bode well for U.S. interests in international negotiations over intellectual property laws. Foreign governments working to improve their patent protection and enforcement procedures in the name of harmonization and compliance with international patent norms, *see General Agreement on Tariffs and Trade Uruguay Round Agreements, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)* (1994), will come to realize that after *Festo*, U.S. patent law now provides a much thinner scope of protection, and that the value of the U.S. patents owned by their citizens has been significantly diminished. Some foreign nations may well imitate this development by adopting similar rules to the detriment of U.S. industry obtaining patents in those nations.

III. Retroactive Application of the *Festo* "Complete Bar" Rule Will Work a Substantial Injustice On Owners Of The 1.2 Million Extant U.S. Patents

Since announcing the *Festo* complete bar rule, the Federal Circuit has applied it retroactively to patents that were sought and obtained many years before *Festo*. *See Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 2001 U.S. App. LEXIS 7894, *28-*33 (Fed. Cir. 2001) (applying complete bar rule to patent that issued in 1978); *Biovail Corp. Int'l v. Andrx Pharms., Inc.*, 239 F.3d 1297, 1303-04 (Fed. Cir. 2001) (applying complete bar rule to patent that issued in 1996); *Litton Sys. v. Honeywell, Inc.*, 238 F.3d 1376, 1380 (Fed. Cir. 2001) (applying complete bar rule to patent that was reissued in 1989); *Pioneer Magnetics v. Micro Linear Corp.*, 238 F.3d

1341, 1347-48 (Fed. Cir. 2001) (applying complete bar rule to patent that issued in 1987). This retroactive application of *Festo* does substantial injustice to owners of the approximately 1.2 million issued U.S. patents now in force, none of whom had any notice or opportunity for hearing before the Federal Circuit's imposition of the drastic consequences that now stem from patent prosecution decisions made years earlier under very different rules. *See Festo*, 234 F.3d at 618 (Michel, J., concurring-in-part and dissenting-in-part) (predicting that complete bar rule "will reduce the effective scope, and thus, the value, of most of the 1,200,000 patents that are unexpired and enforceable."); *cf. Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964) (reversing on 14th Amendment Due Process grounds petitioners' criminal convictions that had been based on state Supreme Court's retroactive and expansive interpretation of criminal trespass statute, and explaining that "an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an *ex post facto* law, such as Art. I, § 10, of the Constitution forbids.").

Both this Court's majority and concurring opinions in *Warner-Jenkinson* expressed sensitivity towards possible retroactive application of the limited "silent record" presumption of estoppel announced there, which is triggered only in the relatively rare instance when a prosecution history does not reflect any reason for a patent applicant's amendment of her claims. *See Warner-Jenkinson*, 520 U.S. at 32 n.6 (rejecting petitioner's proposed "brighter line" rule of complete estoppel in part because "[t]o change so substantially the rules of the game now could very well subvert the various balances the PTO sought to strike when issuing the numerous patents which have not yet expired and

which would be affected by our decision."); *id.* at 41-42 (Ginsburg, J., concurring) (adding "cautionary note" that "[t]he new presumption [of prosecution history estoppel in the limited instance of no explanation for an amendment], if applied woodenly, might in some instances unfairly discount the expectations of a patentee who had no notice at the time of patent prosecution that such a presumption would apply.").

As discussed in Part I *supra*, the Federal Circuit in *Festo* went far beyond this Court's narrowly-tailored "silent record" presumption of estoppel in *Warner-Jenkinson*; the Federal Circuit's new complete bar rule applies regardless of whether or not the patent applicant provided an explanation for its claim amendment. *See Festo*, 234 F.3d at 576. Despite this dramatic imposition of estoppel regardless of an applicant's explanation for amendment, the Federal Circuit did not hesitate to retroactively apply the new complete bar rule to the parties before it in *Festo*. *See id.* at 589 (application of bar to Stoll patent); *id.* at 591 (application of bar to Carroll patent). The Federal Circuit continues to apply the complete bar rule retroactively, as demonstrated by *Lockheed Martin*, *Biovail*, *Litton*, and *Pioneer Magnetics*, *supra*.

The only Federal Circuit decision to expressly address the law and applicability of retroactivity of the *Festo* complete bar rule is *Insituform Techs., Inc. v. CAT Contracting, Inc.*, 2001 U.S. App. LEXIS 4570 (Fed. Cir. Mar. 26, 2001) (non-precedential). Although the *Insituform* decision is curiously designated as non-precedential, it is at least instructive of the retroactivity views of some judges of the Federal Circuit. The *Insituform* opinion states:

> Since we applied the rule of law established in *Festo* to the parties in that case, *Festo*, 234 F.3d at 587-91, 56 USPQ2d at 1885-90, the holding in *Festo* "must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate [the] announcement of the rule." *Harper v. [] Dep[artment] of Taxation*, 509 U.S. 86, 97 (1993). When a court has "applied a rule of law to the litigants in one case it must do so with respect to all others not barred by procedural requirements or res judicata." *James B. Beam Distilling Co. v. G[eorgia]*, 501 U.S. 529, 544 (1991).

Insituform, 2001 U.S. App. LEXIS at 4570, *13.

Despite the *Insituform* panel's reliance on this Court's decisions in *Harper* and *Beam*, those decisions do not compel retroactive application of the *Festo* complete bar rule by the Federal Circuit. First, *Harper* involved the retroactive application of this Court's earlier decision in *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803 (1989), on a *constitutional* doctrine of intergovernmental tax immunity. *See Harper*, 509 U.S. at 89. *Festo* does not involve a constitutional doctrine but rather imposes entirely judge-made doctrines of patent law; *i.e.*, equivalents and prosecution history estoppel. *See Warner-Jenkinson*, 520 U.S. at 26 n.3 (recognizing that "this Court approved of the doctrine of equivalents in *Winans v. Denmead*, 56 U.S. 330, 15 HOW 330, 14 L. Ed. 717 (1854)."); *id.* at 39 n.8 (mentioning prosecution history estoppel as one of the "various legal

limitations on the application of the doctrine of equivalents . . .").

Second, *Harper* involved retroactive application of a new rule *by this Court*, not by a court of appeals as in *Festo*. *See Harper*, 509 U.S. at 89 (stating that "we hold that *this Court's* application of a rule of federal law to the parties *before the Court* requires every court to give retroactive effect to that decision.") (emphases added); *id.* at 97 (holding that "[w]hen *this Court* applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate *our announcement* of the rule.") (emphases added).

Lastly, to the extent that this Court's flexible retroactivity doctrine set forth in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), has continued vitality even after *Harper* and *Beam*, *see Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 761-62 (1995) (Kennedy, J., concurring) (endorsing possibility of non-retroactive application of judicial decisions); *see also Harper*, 509 U.S. at 110-12 (Kennedy, J., concurring) (stating view that retroactivity in civil cases continues to be governed by standard announced in *Chevron*); *id.* at 113-36 (O'Connor, J., dissenting) (seeing no reason to abandon Court's traditional retroactivity analysis as articulated in *Chevron*), surely the *Festo* complete bar rule satisfies *Chevron*'s three-pronged test for non-retroactivity: (1) if left uncorrected by this Court, *Festo* has established a new rule of law as demonstrated in Part I, *supra*; (2) prospectivity would not undermine the purposes of the rule; and (3) retroactive application of *Festo* produces

substantial inequitable results, as demonstrated in Part II, *supra*. *See Chevron*, 404 U.S. at 106-07.

CONCLUSION

The Federal Circuit's sweeping imposition on all existing and future U.S. patents of an inflexible bar to the application of the doctrine of equivalents is an important issue that this Court has resolved or should resolve. The AIPLA accordingly urges this Court to grant the petition for *certiorari*.

Respectfully submitted,

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